

central axis therebetween, the distal end terminating in an opening closed by a window transparent to infrared radiation; and

(b) an outer wall spaced radially apart from the base body, the outer wall defining at least one airtight annular air chamber between the outer wall and base body to thermally insulate the temperature measurement probe from the body cavity.

36. (New) The apparatus combination of claim 35 wherein the at least one annular air chamber is pressurized with air.

REMARKS

This amendment is responsive to the non-final office action mailed December 15, 2005. Claims 1, 2, and 4-10 have been amended as explained herein. Claims 3 and 11-19 are canceled. New claims 20-36 have been added which are fully supported by Applicants' original disclosure. No new matter has been added. The pending claims in this application after entry of this amendment are 1, 2, 4-10, and 20-36. Reconsideration and allowance of all pending claims is respectfully requested.

Claims 1, 4, 7-9, 14, 17, and 19 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,017,018 to Iushi et al. ("Iushi"). Claims 14, 17, and 19 have been canceled and the rejection as to those claims is rendered moot. The rejection of claims 1, 4, and 7-9 is respectfully traversed in light of the present amendments. The rejection is first addressed collectively with respect to claims 1 and 7, which are independent and contain similar limitations.

Independent claims 1 and 7 have been amended in a similar manner to clarify the claimed invention solely for the purpose of expediting prosecution. These claims are each directed to a disposable protective cap requiring "a base body forming an inner wall of said disposable protective cap; and an outer wall spaced radially apart from said inner wall, said outer wall being

permanently attached to the inner wall so as to define at least one airtight chamber between the outer wall and the inner wall.” Iushi does not teach or fairly suggest a disposable protective cap as now recited in claims 1 and 7.

With reference to FIGS. 7a and 8a, the Office Action states that Iushi discloses *inter alia* a cap/base body having a “heat insulative air gap” in one embodiment and a “polystyrene foam” in another embodiment which inherently has pores and thus air chambers. Iushi does not teach or fairly suggest, however, the combination of a base body forming an inner wall of said disposable protective cap; and an outer wall spaced radially apart from said inner wall, said outer wall being permanently attached to the inner wall so as to define at least one airtight chamber between the outer wall and the inner wall. In addition to the limitations shared with claim 1, claim 7 further requires that “the at least one air chamber is subdivided by a plurality of fin members.” This limitation is also not taught or fairly suggested by Iushi. In sum, Applicant’s invention as now recited in claims 1 and 7 is clearly distinguishable from Iushi.

Because each and every limitation of claims 1 and 7 is not disclosed by Iushi, these claims are not anticipated and are believed to be allowable. MPEP 2131 (citing *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628 (Fed. Cir. 1987)). Claims 2-6 and 8-11 depend directly or indirectly from claims 1 and 7, respectively, and include all of their parent claim limitations. Accordingly, these dependent claims are allowable for at least the same reasons as the independent claims from which they depend and for the additional limitations added by these dependent claims which further distinguish over Iushi.

New claims 20-26 depend directly from independent claim 1 and contain all of its limitations. Accordingly, these dependent claims are allowable for at least the same reasons as claim 1 and for the additional limitations added by these dependent claims which further distinguish over Iushi. No new matter has been added.

New claims 27-32 depend directly from independent claim 7 and contain all of its limitations. Accordingly, these dependent claims are allowable for at least the same reasons as claim 7 and for the additional limitations added by these dependent claims which further distinguish over Iushi. No new matter has been added.

New independent claim 33 has been added to claim additional aspects of and further define the invention. Claim 33 requires *inter alia* “a generally conical hollow base body of the disposable cap” and “a flexible outer wall spaced radially apart from the base body.” Claim 33 further recites “a proximal circumferential seal permanently joining the base body and the outer wall at or near the proximal end of the base body” and “a distal circumferential seal permanently joining the base body and the outer wall at or near the distal end of the base body, the proximal and distal seals defining at least one annular air chamber between the base body and the outer wall to thermally insulate the temperature probe from the body cavity.” Iushi does not teach or fairly suggest the foregoing disposable cap having an annular air chamber and structure as required by new claim 33 and is believed to be allowable. New claim 34 depends from claim 33 and includes all of its limitations. Claim 34 is believed to be allowable for at least the same reasons as claim 33 and for the additional limitation of the outer cover having “an outwardly convex shape with respect to the longitudinal axis,” which further distinguishes over Iushi. No new matter has been added.

New independent claim 35 has been added to further claim additional aspects of and further define the invention. Claim 35 is directed to an apparatus combination of a temperature measurement probe and a disposable protective cap. Claim 35 requires a “substantially conical temperature measurement probe; and “a self-supporting disposable protective cap including... (a) a base body shaped to fit the body cavity and having a proximal end releasably engaging the temperature measurement probe... and (b) an outer wall spaced radially apart from the base body, the outer wall defining at least one airtight annular air chamber between the outer wall and base body to thermally insulate the temperature measurement probe from the body cavity. Iushi does not teach or fairly suggest such a combination as recited in claim 35. Accordingly, claim 35 is believed to be allowable. New claim 36 depends from claim 35 and further requires that “the at least one annular air chamber is pressurized with air.” Iushi does not teach or fairly suggest this additional limitation. Accordingly, claim 36 is believed to be for at least the same reasons as claim 35 and in view of the additional limitation added which further distinguishes over Iushi. No new matter has been added.

The rejection of dependent claims 2, 5, 6, 9, 10, 12, 13, 15, 16, and 18 under 35 U.S.C. 103(a) is rendered moot by the foregoing amendments to the independent claims and/or claim cancellations herein.

CONCLUSION

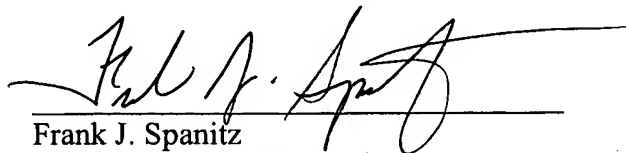
In view of the foregoing, Applicants respectfully request reconsideration and allowance of all pending claims. Should the Examiner disagree with the allowability of any of the claims, the Examiner is respectfully requested to kindly contact Applicants' undersigned representative at 212-309-6375 to resolve any remaining issues.

Respectfully submitted,

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Dated: March 14, 2006

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